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Goughnour, Walker, Vance, and Plier

16 GREGORY LYNN NORWOOD.

2:03-cv-2554 GEB GGH P

17 Plaintiff,

DEFENDANTS' PRETRIAL STATEMENT

19 EDWARD ALAMEIDA, JR., et al.

Trial Date: October 30, 2007
Time: 9:00 a.m.
Courtroom: No. 10 - 13th Floor
Judge: The Honorable
Garland E. Burrell, Jr.

22 Pursuant to the Court's Further Scheduling Order dated April 9, 2007, and Local Rule
23 16-281, Defendants hereby submit the following Pretrial Statement.

(1) Jurisdiction-Venue.

(2) Jury - Non-Jury.

Defendants have requested a jury trial. Plaintiff has also requested a jury trial.

1 **(3) Undisputed Facts.**

2 1. Plaintiff is a black prisoner in the custody of the California Department of
3 Corrections and Rehabilitation (CDCR.)

4 2. Plaintiff was convicted of first-degree murder and second-degree robbery on
5 December 9, 1994.

6 3. Plaintiff was sentenced on March 1, 1995, to a term of life without parole.

7 4. Plaintiff was incarcerated at California State Prison-Sacramento (CSP-SAC),
8 during the period of July 1995 to November 2005. Plaintiff was housed in B Facility at all times
9 relevant in his complaint.

10 5. CSP-SAC is a Level IV facility. A Level IV facility is the maximum security
11 prison that confines inmates who are deemed to pose the greatest threat to institutional security
12 and safety of staff.

13 6. B Facility traditionally has housed inmates who refuse to program and
14 consistently get into trouble.

15 7. B Facility at CSP-SAC consists of 8 blocks with 64 cells and 128 beds per block.
16 Each cell is configured to hold two prisoners.

17 8. The total population of B Facility in 2002 and 2003 was approximately 1,000
18 inmates. The inmates housed in this facility are of all ethnic groups and races, including Black,
19 White, Hispanic Asian, American Indian, and other.

20 9. B Facility at CSP-SAC is built around a yard where, absent unusual
21 circumstances, daily exercise periods are available to inmates. The yard will accommodate a
22 maximum of 150 inmates at one time.

23 10. B Facility at CSP-SAC had four dining halls at the time of the lockdowns. There
24 is one dining hall located between two blocks.

25 11. B Facility at CSP-SAC has seven concrete yards. There is one concrete yard for
26 each housing block except block 5. Each yard is approximately 50' by 50', and is intended for a
27 maximum of twenty inmates at one time.

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1 12. An assault occurred on four correctional officers by eleven inmates in the B
2 Facility 3/4 dining room on January 4, 2002. The assault started when an inmate turned on
3 Officer Haggard and attempted to murder him.

4 13. Three of the four correctional officers involved in the incident of January 4, 2002,
5 received injuries consisting of puncture wounds. The officers were transported to the hospital for
6 treatment, and Officer Haggard was hospitalized in the intensive care unit.

7 14. Two inmate-manufactured weapons were discovered following the incident of
8 January 4, 2002.

9 15. As a result of the assault of January 4, 2002, a lockdown of B Facility was ordered
10 by the acting Lieutenant and approved by Warden C. Pliler.

11 16. During a lockdown, all inmates are confined to their cells. Inmates are cell fed
12 and allowed to exit their cells for controlled showers. Inmates are also provided essential
13 services such as medical/mental health, hygiene, and access to courts. Inmates are not allowed to
14 go their assigned work or education programs, and all such programs, yard recreation, law library
15 and religious services, regular visiting, canteen, and telephone privileges are suspended.

16 17. An attempted murder of staff occurred in C Facility on February 22, 2002.

17 18. Plaintiff was released from lockdown on March 27, 2002, as part of the process of
18 returning B Facility to normal programing.

19 19. The lockdown triggered on January 4, 2002, continued until April 3, 2002.

20 20. A stabbing/slashing incident involving white inmates occurred on the main
21 exercise yard on April 15, 2002.

22 21. Officer Tuter was assaulted by a black inmate with an inmate-manufactured
23 weapon on May 8, 2002,

24 22. As a result of the stabbing/slashing incident of April 15, 2002, and the attack on
25 Officer Tuter, a lockdown of B Facility was ordered by Defendant Vance. Defendant Vance was
26 the Facility Captain for B Facility. The lockdown was approved by Terry Rosario, acting
27 warden.

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1 23. A lockdown was in place from May 8, 2002, to July 31, 2002.

2 24. Plaintiff was released from lockdown on July 31, 2002.

3 25. A fight occurred between white and Hispanic inmates in B Facility concrete yards
4 on August 22, 2002. Numerous inmate-manufactured weapons were discovered in the
5 possession of white and Southern Hispanic inmates after this incident.

6 26. A fight occurred between white and Hispanic inmates in the B Facility main yard
7 on October 3, 2002, which resulted in several inmates receiving serious injuries. Numerous
8 inmate-manufactured weapons were discovered in the possession of white and Southern Hispanic
9 inmates after this incident.

10 27. A fight occurred between white and Hispanic inmates during evening showers on
11 December 15, 2002, which resulted in an inmate receiving serious injuries.

12 28. A riot occurred on the main exercise yard on December 28, 2002, wherein a large
13 number of black inmates attacked prison staff. The riot began when Sergeant Murphy observed
14 and attempted to break up a fight between two inmates. Sergeant Murphy and responding prison
15 staff were then attacked by several inmates.

16 29. Subsequent investigation of the incident of December 28, 2002, determined that
17 the fight between inmates was a diversion for the purpose of distracting and attacking prison
18 staff.

19 30. At least 24 inmates were active participants in the assault on staff on December
20 28, 2002.

21 31. Some of the attacking inmates on December 28, 2002, had inmate-manufactured
22 weapons. Six inmate-manufactured weapons were recovered following the incident.

23 32. Nine staff members sustained injuries as a result of the incident of
24 December 28, 2002.

25 33. As a result of the incident of December 28, 2002, as well as prior incidents of
26 violence between the inmates, a lockdown of B Facility was ordered by Defendant Vance.
27 Defendant Vance was the Facility Captain for B Facility.

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1 34. A fight involving white inmates and the use of deadly weapons occurred in B
2 Facility, block 4, on February 16, 2003. This incident delayed efforts to unlock B Facility.

3 35. The process of unlocking B Facility began on February 21, 2003, with the release
4 of a small number of uninvolved inmates and observing their behavior. The process continued
5 with the release of white and Hispanic inmates to concrete yards in small groups on
6 March 18, 2003.

7 36. Two separate stabbing incidents involving white inmates occurred on
8 May 5, 2003, in which both victims sustained serious injuries.

9 37. Black inmates, including Plaintiff, were allowed to use the concrete yards on or
10 after May 15, 2003.

11 38. A slashing incident involving white inmates occurred in B Facility, block 3, on
12 June 1, 2003. The victims of both incidents sustained serious injuries.

13 39. The lockdown triggered on December 28, 2002, continued to June 1, 2003.

14 40. Officer Curry was assaulted and slashed numerous times with a can lid formed
15 into a weapon by an black inmate on September 3, 2003. The assault occurred in B Facility.

16 41. As a result of the assault on Officer Curry, a lockdown of B Facility was ordered
17 by Defendant Willey. Defendant Willey was the acting Facility Captain for B Facility at the time
18 of this assault. The lockdown was approved by the warden.

19 42. A correction officer was stabbed and seriously wounded by an inmate in C
20 Facility of CSP-SAC on September 29, 2003.

21 43. Because of the unusually high number of recent staff assaults, a State of
22 Emergency was declared by the Director of CDCR in September 2003.

23 44. Release of white, Hispanic and inmates of other races in B Facility began on
24 October 14, 2003.

25 45. Plaintiff was released from the lockdown on November 4, 2003.

26 46. The lockdown triggered on September 3, 2003, continued to December 3, 2003.

27 47. The lockdowns were ordered to insure the security and safety of the staff and
28 inmates, and to facilitate investigation of each of the assault incidents and the reasons behind the

1 incidents. The lockdowns were not ordered to punish or retaliate against the inmates.

2 48. During the lockdowns, investigation was conducted into the cause of each
3 incident to determine if it was an isolated incident or part of a planned attack, and whether other
4 attacks were planned on staff. The investigation included searches of all cells, interviews of all
5 inmates at the facility, searches of common areas of the prison facility, digging up the outside
6 yard as necessary, contact with and gathering of information from other prisons, interviewing
7 inmates at other housing facilities in CSP-SAC and at other prisons as necessary, verifying and
8 following up on leads obtained, and analyzing information.

9 49. After completion of the investigation following a lockdown, a return to full
10 programming is accomplished incrementally. The process generally involves releasing critical
11 workers first. Thereafter, non-involved inmates are normally released to full programming,
12 followed by non-involved groups and then involved groups. Inmates are released in small groups
13 initially to provide staff an opportunity to observe their conduct in a controlled setting.

14 50. During the entire period of each lockdown, weekly meetings involving the
15 Warden, Associate Warden, Facility Captain, Use of Force Coordinator, and other critical staff
16 members were conducted to discuss progress of investigation of the assaults and the status of the
17 lockdown. Frequently, the meetings took place more than once per week.

18 51. It is CDCR's policy to return to full programming as soon as it is safe to do so.

19 **(4) Disputed Factual Issues.**

20 1. Defendants dispute knowing or having any information that the assaults on prison
21 staff precipitating the four lockdowns were isolated and spontaneous.

22 2. Defendants dispute that a proper and thorough search of B Facility at CSP-SAC
23 can be completed in nine to fourteen days.

24 3. Defendants dispute that an interview of all inmates of B Facility at CSP-SAC can
25 be completed in three days.

26 4. Defendants dispute that the lockdowns continued longer than necessary to
27 complete the investigation of each of the assault incidents and to ensure the safety and security of
28 staff and inmates at CSP-SAC.

1 5. Defendants dispute that the lockdowns were ordered to punish or retaliate against
2 the inmates.

3 6. Defendants dispute that use of the small yards by Plaintiff for exercise during the
4 lockdowns was feasible.

5 7. Defendants dispute that the denial of outdoor exercise during the four lockdowns
6 was a violation of Plaintiff's Eighth Amendment right.

7 8. Defendants dispute that Plaintiff is entitled to the recovery of damages for the
8 denial of outdoor exercise during the four lockdowns.

9 **(5) Disputed Evidentiary Issues.**

10 1. Evidence regarding disciplinary detention or administrative segregation policies
11 and procedures is inadmissible and irrelevant and inadmissible.

12 2. Evidence of CDCR policy changes that occurred during the period of lockdowns
13 relating to shaving razors and tobacco products is irrelevant and inadmissible.

14 3. Evidence regarding the number and adequacy of medical and health care staff
15 during the periods of lockdown is irrelevant and inadmissible.

16 4. Evidence regarding the trial of former CDCR employee Stephen Scarsella and the
17 alleged "code of silence" referenced during the trial is irrelevant and inadmissible.

18 5. Evidence of grievances submitted against prison staff prior to the assaults that
19 preceded the lockdowns is irrelevant and inadmissible.

20 6. Evidence of removal of the Prison Industry Authority from B Facility is irrelevant
21 and inadmissible.

22 7. Evidence of inmates taken out of the general population and placed in
23 administrative segregation as a result of anonymous letters to prison officials is irrelevant and
24 inadmissible.

25 8. Opinion testimony by percipient inmates to the assaults that preceded the four
26 lockdowns on the issue of whether the subject assaults were isolated and spontaneous is
27 irrelevant and inadmissible.

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1 9. Testimony of inmates at other institutions that they were not questioned or locked
2 down is irrelevant and inadmissible.

3 **(6) Special Factual Information in Certain Actions.**

4 Not applicable.

5 **(7) Relief Sought.**

6 Plaintiff's amended complaint filed June 7, 2005, requests damages for alleged
7 physical and psychological injuries allegedly resulting from the denial of outdoor exercise during
8 four lockdown periods. He requested injunctive relief and "one million dollars monetary relief to
9 send a message that these acts of retaliation will not be tolerated." (Am. Compl. ¶ V.) As this is
10 a federal civil rights action brought by a prisoner, Plaintiff cannot recover for mental or
11 emotional injury suffered in custody without a prior showing of physical injury.
12 42 U.S.C. § 1997e(e).

13 The court has ruled that Plaintiff's claim for injunctive relief is moot and enter
14 judgment for Defendants on this issue by order filed March 30, 2007.

15 Plaintiff's pretrial statement makes a claim for money he would have made from his
16 job assignment during the lockdown. Since Plaintiff's claim relates only to the lack of outdoor
17 exercise during the lockdown, he is not entitled to recovery of this claim.

18 Plaintiff does not include any other claim for compensatory damages in his pretrial
19 statement. Plaintiff does include a claim for one million dollars for punitive damages, and costs.

20 **(8) Points of Law.**

21 **A. Liability for deprivation of Eighth Amendment Right to Exercise.**

22 Plaintiff's action is brought pursuant to 42 U.S.C. Section 1983. Liability under
23 Section 1983 exists where a person "under color of any statute of any state ... subjects, or causes
24 to be subjected, any citizen . . . to the deprivation of any rights . . . secured by the Constitution . .
25 . . ."

26 The language of Section 1983 requires a degree of causation as an element of
27 individual liability. *Sims v. Adams*, 537 F.2d 829, 831 (5th Cir. 1976). "A person 'subjects'
28 another to deprivation of a constitutional right, within the meaning of § 1983, if he does an

1 affirmative act, participates in another's affirmative act or omits to perform an act which he is
2 legally required to do that caused the deprivation of which complaint is made."

3 *Johnson v. Duffy*, 588 F.2d 740, 743 (9th Cir. 1978).

4 Plaintiff has named the wardens, associate wardens, and facility captains as Defendants
5 in this case.^{1/} The Defendants are supervisory personnel at CSP-SAC. Supervisory personnel are
6 not liable under the theory respondeat superior in a Section 1983 action. *Jones v. Williams*,
7 297 F.3d 930, 934 (9th Cir. 2002); *Taylor v. List*, 880 F.2d 1040, 1045 (9th Cir. 1989). There
8 must be some showing of personal participation in the alleged rights deprivation.
9 *Jones v. Williams*, 297 F.3d at 934. Therefore, Plaintiff must prove that each Defendant did an
10 affirmative act, participated in another's affirmative act, or omitted to perform an act which he or
11 she is legally required to do and which violated a right of the Plaintiff secured by the
12 Constitution. *Johnson v. Duffy*, 588 F.2d at 743.

13 Plaintiff was incarcerated at CSP-SAC at the time of the lockdowns complained of in
14 his complaint. The Constitution "does not mandate comfortable prisons," but neither does it
15 permit inhumane ones. *Farmer v. Brennan*, 511 U.S. 825, 832 (1994) (quoting *Rhodes v.*
16 *Chapman*, 452 U.S. 337, 349 (1981)). The treatment a prisoner receives in prison and the
17 conditions under which he is confined are subject to scrutiny under the Eighth Amendment.
18 *Helling v. McKinney*, 509 U.S. 25, 31 (1993). It is only the "unnecessary and wanton infliction
19 of pain" that implicates the Eighth Amendment. *Wilson v. Seiter*, 501 U.S. 294, 297 (1991)
20 (quoting *Gregg v. Georgia*, 428 U.S. 153, 173 (1976)).

21 Plaintiff alleges excessive deprivation of outdoor exercise during four lockdown
22

23 1. Plaintiff has sued Defendants in both their official and personal capacity. An action
24 against a government official in their official capacity is to be treated as an action against the entity.
Brandon v. Holt, 469 U.S. 464, 469 (1985). Agencies and subdivisions of the state, including
25 CDCR, are not "persons" subject to suit under § 1983. *Will v. Michigan Dept. of State Police*, 491
U.S. 58, 70 (1989); *Taormina v. California Dept. of Corrections*, 946 F.Supp. 829, 831 (S.D.Cal.
26 1996). Moreover, an action against a state official is barred by the Eleventh Amendment. *Edelman*
v. *Jordan*, 415 U.S. 651, 663 (1974). The exception to these immunities for a claim for prospective
27 injunctive relief is not applicable since the court ruled that Plaintiff's claim for injunctive relief is
moot by order filed March 30, 2007. Plaintiff's action is therefore limited to a claim for damages
28 against Defendants in their personal capacity.

1 periods violated his Eighth Amendment right. An Eighth Amendment claim regarding
2 conditions of confinement must meet two requirement, one subjective and one objective.
3 *Farmer v. Brennan*, 511 U.S. at 834. Under the objective requirement, the prison official's act or
4 omission must result in a denial of the "minimal civilized measure of life's necessities." *Id.*
5 (quoting *Rhodes v. Chapman*, 452 U.S. at 347). The punishment imposed "cannot be so totally
6 without penological justification that it results in the gratuitous infliction of suffering."
7 *Gregg v. Georgia*, 428 U.S. at 183. The subjective requirement relates to the defendant's state of
8 mind, and requires that the prison official act with deliberate indifference. *Id.* A prison official
9 must both know of and consciously disregard an excessive risk of harm to an inmate's health or
10 safety. *Farmer v. Brennan*, 511 U.S. at 837, 839.

11 The Ninth Circuit has recognized the need for outdoor exercise. In *Spain v. Procunier*,
12 600 F.2d 189 (9th Cir. 1979), the court stated that some form of regular outdoor exercise is
13 extremely important to the psychological and physical well being of the inmates. *Id.* at 199.
14 A long term deprivation of outdoor exercise can constitute cruel and unusual punishment.
15 *Spain v. Procunier*, 600 F.2d at 200; *Allen v. Sakai*, 48 F.3d 1082, 1087 (9th Cir. 1994).

16 The denial of outdoor exercise occurred only during four lockdowns at CSP-SAC.
17 A lockdown generally refers to a condition of abnormally heightened security during which
18 prisoners are confined to their cells totally or for a much greater portion of the day than usual.
19 *Hayward v. Procunier*, 629 F.2d 599, 600 n.1 (9th Cir. 1980.) The lockdowns were in response
20 to four separate assaults on prison staff in 2002 and 2003 by Level IV inmates. These are
21 inmates classified as requiring the highest level of security in custody based on their
22 precommitment history, commitment offense, term of imprisonment, and other case factors.
23 *Toussaint v. McCarty*, 597 F.Supp. 1388, 1394 (N.D.Cal. 1984).

24 Prison officials have a right and a duty to take the necessary steps to reestablish order
25 in a prison when such order is lost. *Hoptowit v. Ray*, 682 F.2d 1237, 1259 (9th Cir. 1982). This
26 is for the benefit of the prisoners as much as for the benefit of the prison officials. *Id.* The
27 warden is the chief executive officer at the prison, and is responsible for the custody, treatment,
28 training and discipline at the prison. Cal. Code Regs, tit. 15, § 3380(a). A state of emergency

1 shall exist when the warden temporarily suspends any non-essential operation, procedure, service
2 or function, and the normal time limits or schedules for activities in order to prevent, contain, or
3 control a disturbance. Cal. Code Regs, tit. 15, § 3383(a). The prison's affected areas, programs,
4 and operations shall be returned to normal as soon as the warden determines that it is safe to do
5 so. Cal. Code Regs, tit. 15, § 3383(d).

6 When the emergency exists, prison officials may be more restrictive than they
7 otherwise may be, and certain services may be suspended temporarily. *Hoptowit v. Ray*,
8 682 F.2d at 1259. More basic needs can be withheld for a shorter time, while less critical needs
9 may be denied for reasonable periods of time when disciplinary needs warrant. *Id.* Outdoor
10 exercise can be restricted where factors such as disciplinary needs or other unusual circumstances
11 make exercise impossible. *Spain v. Procunier*, 600 F.2d at 1999. In determining the existence
12 of prisoner needs, the court must give reasonable leeway to prison officials. *Hoptowit v. Ray*,
13 682 F.2d at 1259.

14 The inquiry concerning the constitutional adequacy of exercise must proceed from the
15 individual fact of each case. *Toussaint v. Yockey*, 722 F.2d 1490, 1492 (9th Cir. 1984).
16 Therefore, each lockdown must be examined in light of the circumstances that existed at the
17 prison, the incident that lead to the lockdown, and the nature and extent of investigation that was
18 necessary following the lockdown to insure the safety of staff and inmates and the security of the
19 institution. This review of the restrictions of the lockdown in light of the emergency conditions
20 that existed will permit a determination of the restriction of outdoor exercise was reasonable, or
21 whether prison officials crossed the Eighth Amendment line. *Hayward v. Procunier*, 629 F.2d at
22 603.

23 Defendants recognize that the courts have found that some form of outdoor exercise is
24 important to maintaining the physical and mental health of prisoners. *Spain v. Procunier*,
25 600 F.2d at 1999. In this case, the objective requirement for a determination of an Eighth
26 Amendment violation under *Farmer v. Brennan* is acknowledged. Therefore, if the then-existing
27 state of emergency did not justify the denial of outdoor exercise for the full extent of the
28 lockdown, the fact-finder must determine if the named Defendants acted with deliberate

1 indifference to the Plaintiff's right to outdoor exercise. This requires consideration of each
2 Defendant's state of mind regarding the denial of exercise, and a finding that each Defendant
3 knew of an excessive risk of harm to the Plaintiff due to the denial of outdoor exercise and
4 consciously disregarded this risk. *Farmer v. Brennan*, 511 U.S. at 837, 839.

5 **B. Qualified Immunity**

6 If one or more of the Defendants are found liable to Plaintiff, they are entitled to
7 consideration of the defense of qualified immunity. Defendants' entitlement to qualified
8 immunity is based on the reasonableness of their belief that their actions were lawful, and not on
9 the reasonableness of their actions. *Estate of Ford v. Ramirez-Palmer*, 301 F.3d 1043, 1050
10 (9th Cir. 2002). Defendants are entitled to qualified immunity, even if they were deliberately
11 indifferent, if the Court finds that they could have reasonably believed that their actions were
12 lawful. *Id.* This is a matter of law for the Court, not a matter of fact for the jury.

13 Defendants motion for summary judgment on the issue of qualified immunity was
14 denied because the record was not clear as to when the emergency necessitating the lockdowns in
15 B Facility ceased to exist such that it was safe to release African American inmates to the
16 exercise yard. (See Findings and Recommendations of March 5, 2007, at 43:3-6.) Defendants'
17 entitlement to qualified immunity at trial will depend on what evidence is produced to the court
18 for determination of this issue.

19 **C. Punitive Damages**

20 Plaintiff's only monetary claim is for punitive damages. Plaintiff must prove more
21 than a violation of his Eighth Amendment right to recover punitive damages.

22 In a Section 1983 action, punitive damages are recoverable only if the defendants
23 intended to violate federal law, or acted in a reckless or callous disregard of plaintiff's federally
24 protected rights. *Smith v. Wade*, 461 U.S. 30, 51 (1983). It is not enough that defendants may
25 have acted in an objectively unreasonable manner; their subjective state of mind must be
26 assessed. *Wulf v. City of Wichita*, 883 F.2d 842, 867 (10th Cir. 1989). Where there is no
27 evidence that a Section 1983 defendant has acted with evil intent, there is no legal right to
28 punitive damages. *Ward v. City of San Jose*, 967 F.2d 280, 286 (9th Cir. 1991).

1 **D. Impeachment by Evidence of Prior Felony Convictions**

2 Rule 609 of the Federal Rules of Evidence provides that evidence of a witness's prior
3 conviction of a felony may be used to impeach that witness's testimony. Defendants contend that
4 no one who has a prior felony conviction is entitled to the false aura of veracity, which would
5 occur if impeachment were not allowed. Accordingly, Defendants will seek to impeach the trial
6 testimony of Plaintiff or any of Plaintiff's witnesses with evidence of any prior felony
7 convictions.

8 **(9) Abandoned Issues.**

9 Defendant has not abandoned any issues.

10 **(10) Witnesses.**

11 Plaintiff NORWOOD

12 Defendant M. KNOWLES

13 Defendant STEVEN VANCE

14 Defendant J. WALKER

15 Defendant T. GOUGHNOR

16 Defendant M. MARTEL

17 Defendant D. WILLEY

18 Defendant C. PLILER

19 Terry Rosario

20 A. Nanganama, M.D.

21 Officer Zamudio

22 Cpt. F. Schroeder

23 J. Kidney, Use of Force Coordinator

24 I, O'Brian, Appeals Coordinator

25 R. Carter, Appeals Coordinator

26 Joseph Sherman, RN, PHN

27 B. Swift, R.N.

28 K. Todd, P.A.

1 S. Edmondson, R.N.
2 M. Burvant, M.D.
3 J. Robertson, R.N.
4 L. Barry, M.T.A.
5 Russell Ewing, M.D.
6 Officer S.B. Curry
7 Officer C. Kirshner
8 Officer Navarrete
9 Officer S. Cook
10 Officer D. Lytle
11 Officer R. Woods
12 Officer R. Mendoza
13 Cadet E. Gonzales
14 Officer I. Reyes
15 Officer R. Bishop
16 Officer Mitchell
17 Officer D. Kaiser
18 Officer Tuter
19 Officer Fallon
20 Officer L. Brichetti
21 Officer D. Rodriguez
22 Sgt. Murphy
23 Officer Stewart
24 Officer Whitted
25 Officer Cervantes
26 Officer Cook
27 Officer Ray
28 Sgt. D. Just

1 Lt. D. Just
2 Officer M. Nielson
3 Sgt. Shannon
4 Officer E. Advincula
5 Officer E. Vela
6 Officer D. Eddy
7 Officer I. Reyes
8 Officer J. Moore
9 Officer C. King
10 Sgt. Graham
11 Officer Nielson
12 Officer C. Wuest
13 Officer R. Viles
14 Officer Tiang Trong
15 Officer R. Compton
16 Officer Stotts
17 Officer Ellin
18 Sgt. Lytle
19 Officer S. Zanini
20 Sgt. Lytle
21 Lt. D. Connor
22 Officer G. Elliot
23 Officer B. Maxham
24 Officer E. Lopez
25 Officer Nolan
26 Officer R. Garcia
27 Officer J. Haggard
28 Officer T. Huggins

1 Officer V. Casey
2 Officer M. Elliot
3 Officer M. Frasier
4 Officer Leonard
5 Custodian of Records, California Department of Corrections and Rehabilitation for
6 California State Prison, Sacramento.^{2/}

7 Custodian of Records, California Department of Corrections and Rehabilitation for
8 California Substance Abuse Treatment Facility, Corcoran.

9 **(11) Exhibits—schedules and summaries.**

- 10 A. Declaration of STEVE VANCE
- 11 B. Declaration of D. WILLEY
- 12 C. Declaration of J. WALKER
- 13 D. Declaration of C. PLILER
- 14 E. Crime/Incident Report, Log No. SAC FAB 02 01 0008 with attached
15 diagrams and photographs
- 16 F. Crime/Incident Report, Log No. SAC FAB 02 05 0162 with attached
17 photographs of scene, weapon, victims, and suspect
- 18 G. Crime/Incident Report, Log No. SAC FAB 02 12 0613 with attached
19 photographs of victims, suspects, weapons, and scene of incident
- 20 H. Crime/Incident Report, Log No. SAC FAB 03 09 0377 with attached
21 photographs of victim, suspect, weapon, and scene of incident
- 22 I. Plaintiff's Abstract of Judgment
- 23 J. Photographs of B Facility main yard, dining area and concrete yard.
- 24 K. Appeal log no. 03-00661

25
26 2. The custodians of records for both facilities will be available to testify at trial. Absent any
27 dispute about the authenticity of the documents to be presented, Defendants request that they be
28 permitted to use the declarations listed as exhibits BBBB, CCCC, and DDDD to authenticate
 30 days before trial or as ordered by the court.

- 1 L. First Level Reviewer's Response to appeal log no. 03-00661 dated April 1,
- 2 2003
- 3 M. Second Level Reviewer Response dated May 6, 2003, re Log no. SAC 03-
- 4 00661
- 5 N. Director's Level Appeal Decision dated June 27, 2003, re Log no. SAC 03-
- 6 00661
- 7 O. Appeal log no. SAC-B-03-02172
- 8 P. First Level Reviewer's Response to appeal log no. SAC-B-03-02172 dated
- 9 9/24/2003
- 10 Q. Inmate/Parolee Appeal Screening Form dated 10/7/03 re log no. SAC-B-
- 11 02172
- 12 R. Inmate Appeals Branch correspondence to Plaintiff dated November 18,
- 13 2003 re Log no. SAC 03-2172
- 14 S. Plaintiff's complete medical records and file, including but not limited to:
 - 15 1. Health Care Services Request Form dated 9/1/04
 - 16 2. Health Care Services Request Form dated 3/3/05
 - 17 3. Health Care Services Request Form dated 7/26/05
 - 18 4. Health Care Services Request Form dated 9/27/05
 - 19 5. Health Care Services Request Form dated 11/20/05
 - 20 6. Health Care Services Request Form dated 1/8/06
 - 21 7. Health Care Services Request Form dated 3/10/06
 - 22 8. Health Care Services Request Form dated 5/30/06
 - 23 9. Health Care Services Request Form dated 8/31/06
 - 24 10. Health Care Services Request Form dated 10/27/06
 - 25 11. Health Care Services Request Form dated 3/4/07
 - 26 12. Health Care Services Request Form dated 4/8/07
 - 27 13. Health Care Services Request Form dated 4/13/07
 - 28 14. Progress Notes dated 1/9/96 and 3/28/96

- 1 15. Progress Notes dated 7/31/96 to 11-13-96
- 2 16. Progress Notes dated 5/26/02 to 10/18/02
- 3 17. Progress Notes dated 3/9/05
- 4 18. Progress Notes dated 4/2/05
- 5 19. Progress Notes dated 5/4/05
- 6 20. Progress Notes dated 4/2/05 to 5/30/05
- 7 21. Progress Notes dated 5/4/05 to 7/26/05
- 8 22. Progress Notes dated 6/6/06
- 9 23. Progress Notes dated 8/30/06 to 11/17/06
- 10 24. Progress Notes dated 1/22/07
- 11 25. Physician's Orders dated 8/21/96
- 12 26. Physician's Orders dated 11-13-96
- 13 27. Physician's Orders dated 9/7/04
- 14 28. Physician's Orders dated 3-9-05
- 15 29. Physician's Orders dated 4-12-05
- 16 30. Physician's Orders dated 5-4-05
- 17 31. Physician's Orders dated 12/7/05
- 18 32. Physician's Orders dated 12/11/05
- 19 33. Physician's Orders dated 3/6/06
- 20 34. Inmate Health Screening dated 5/25/06
- 21 35. Condensed Mental Health Assessment dated 1/5/06
- 22 36. Encounter Form dated 5-30-06
- 23 37. Mental Health Progress note dated 11/24/98
- 24 38. Medical Report of Injury dated 12/10/05 (2 pages)
- 25 39. Mental Health Screening dated 12-11-05
- 26 T. SAC B Facility Lockdown/Modifies Program Matrix
- 27 U. B Facility Program Status memorandum dated August 19, 1999
- 28 V. B Facility Program Status memorandum dated May 20, 2000

- 1 W. B Facility Program Status memorandum dated September 25, 2000
- 2 X. B Facility Program status memorandum dated January 8, 2002
- 3 Y. B Facility Program status memorandum dated January 18, 2002
- 4 Z. B Facility Staff memorandum dated January 22, 2002
- 5 AA. B Facility Program status memorandum dated January 29, 2002
- 6 BB. B Facility Program status memorandum dated February 4, 2002
- 7 CC. B & C Facility Canteen Procedures memorandum dated February 11, 2002
- 8 DD. B Facility Shower Program memorandum dated February 16, 2002
- 9 EE. B Facility Program status memorandum dated February 22, 2002
- 10 FF. B Facility Shower Program memorandum dated February 22, 2002
- 11 GG. B Facility Canteen Program memorandum dated March 1, 2002
- 12 HH. B Facility Canteen Procedures memorandum dated March 4, 2002
- 13 II. B Facility Program status memorandum dated March 5, 2002
- 14 JJ. B Facility Critical Worker List dated March 7, 2002
- 15 KK. B Facility Program status memorandum dated March 8, 2002
- 16 LL. B Facility Critical Workers List dated March 14, 2002
- 17 MM. B Facility Program status memorandum dated March 19, 2002
- 18 NN. B Facility Program status memorandum dated March 20, 2002
- 19 OO. B Facility Program status memorandum dated March 27, 2002
- 20 PP. B Facility Critical Workers List dated March 27, 2002
- 21 QQ. B Facility Program status memorandum dated April 3, 2002
- 22 RR. B Facility Program Critical Workers List dated April 3, 2002
- 23 SS. B Facility Program status memorandum dated April 10, 2002
- 24 TT. B Facility Program status memorandum dated April 30, 2002
- 25 UU. B Facility Program status memorandum dated May 9, 2002
- 26 VV. B Facility Program status memorandum dated June 3, 2002
- 27 WW. B Facility Program status memorandum dated June 6, 2002
- 28 XX. B Facility Program status memorandum dated July 2, 2002

1 YY. B Facility Program status memorandum dated July 11, 2002
2 ZZ. B Facility Program status memorandum dated July 19, 2002
3 AAA. B Facility Program Status memorandum dated July 30, 2002
4 BBB. B Facility Program Status memorandum dated August 16, 2002
5 CCC. B Facility Program Status memorandum dated August 19, 2002
6 DDD. B Facility Program Status memorandum dated August 29, 2002
7 EEE. B Facility Program Status memorandum dated November 27, 2002
8 FFF. B Facility Program Status memorandum dated December 5, 2002
9 GGG. B Facility Program Status memorandum dated December 16, 2002
10 HHH. B Facility Program Status memorandum dated February 4, 2003
11 III. B Facility Program Status memorandum dated February 7, 2007
12 JJJ. B Facility Program Status memorandum dated March 3, 2003
13 KKK. B Facility Program Status memorandum dated March 14, 2003
14 LLL. B Facility Program status memorandum dated May 2, 2003
15 MMM. B Facility Program status memorandum dated May 7, 2003
16 NNN. B Facility Program Status memorandum dated May 14, 2003
17 OOO. B Facility Program status memorandum dated May 27, 2003
18 PPP. B Facility Program status memorandum dated June 2, 2002
19 QQQ. B Facility Program Status memorandum dated June 20, 2003
20 RRR. B Facility Program Status memorandum dated June 26, 2003
21 SSS. B Facility Program Status memorandum dated July 19, 2003
22 TTT. B Facility Program status memorandum dated September 10, 2003
23 UUU. B Facility Program status memorandum dated October 28, 2003
24 VVV. Program Status Reports; executed:
25 1. 1-8-02
26 2. 1-15-02
27 3. 2/4/02
28 4. 2/13/02

1 5. 3/6/02
2 6. 3/11/02
3 7. 3/19/02
4 8. 3/25/02
5 9. 4/8/02
6 10. 4/9/02
7 11. 5/13/02
8 12. 5/13/02
9 13. 5/13/02
10 14. 5/13/02
11 15. 5/22/02
12 16. 5/22/02
13 16. 5/28/02
14 17. 5/28/02
15 18. 6/3/02
16 19. 6/3/02
17 20. 6/10/02
18 21. 6/10/02
19 22. 6/18/02
20 23. 6/18/02
21 24. 6/23/02
22 25. 6/23/02
23 26. 7/13/02
24 27. 7/13/02
25 28. 7/13/02
26 29. 7/13/02
27 30. 7/15/02
28 31. 7/15/02

1 32. 12/30/02
2 33. 1/7/03
3 34. 1/14/03
4 35. 1/22/03
5 36. 1/28/03
6 37. 2/4/03
7 38. 2/18/03
8 39. 2/27/03
9 40. 3/6/03
10 41. 3/11/03
11 42. 3/20/03
12 43. 3/28/03
13 44. 4/7/03
14 45. 4/16/03
15 46. 4/25/03
16 47. 5/5/03
17 48. 5/5/03
18 49. 5/13/03
19 50. 5/22/03
20 51. 5/30/03
21 52. 6/10/03
22 53. 6/10/03
23 54. 9/16/03
24 55. 9/24/03
25 56. 9/30/03
26 57. 10/6/03
27 58. 10/14/03
28 59. 10/20/03

1 60. 10/28/03

2 61. 11/3/03

3 62. 11/13/03

4 WWW. Departmental Operations Manual Section 55015

5 XXX. Unlock Checklist

6 YYY. Custodial Counseling Chrono dated 8-17-02

7 ZZZ. Custodial Counseling Chrono dated 11-7-02

8 AAAA. Videotape of incident of 12/28/02

9 BBBB. Declaration of Kyle Kypke dated June 10, 2004

10 CCCC. Declaration of Kyle Kypke dated December 1, 2004

11 DDDD. Declaration of Aida Gonzalez dated 6/12/07

12 **(12) Discovery Documents.**

13 Defendants may offer Plaintiff's responses to Defendants' First Set of Interrogatories
14 into evidence at the time of trial, or use these responses to impeach Plaintiff's testimony.

15 **(13) Further Discovery or Motions.**

16 Defendants do not anticipate any further discovery or motions at this time.

17 **(14) Stipulations.**

18 Defendants stipulate to the undisputed facts set forth in paragraph 3, *supra*.

19 **(15) Amendments – Dismissals.**

20 None.

21 **(16) Settlement Negotiations.**

22 Settlement negotiations or a court settlement conference will not be helpful.

23 **(17) Agreed Statements.**

24 None.

25 **(18) Separate Trial of Issues.**

26 Defendants seek bifurcation on the issue of punitive damages if the court deems that
27 Plaintiff has made a claim for punitive damages.

28 / / /

1 **(19) Impartial Experts-Limitation of Experts.**

2 Defendants do not believe there is any necessity to appoint an impartial expert or limit
3 the number of experts in this matter.

4 **(20) Attorneys' Fees.**

5 Plaintiff is proceeding in propria persona. Therefore, he may not seek attorneys' fees
6 under 42 U.S.C. §1988. Defendants may seek attorneys' fees and costs after trial, if they prevail,
7 pursuant to 42 U.S.C. §1988(b) or 28 U.S.C. §1919.

8 **(21) Trial Exhibits.**

9 Special handling of trial exhibits is not anticipated.

10 **(22) Miscellaneous.**

11 A. Defendants estimates a three-day jury trial.
12 B. Defendants will submit proposed voir dire questions as directed by the Court.
13 C. Defendants request that the parties exchange documentary evidence thirty days
14 before the trial date.

15
16 Dated: June 15, 2007

17 Respectfully submitted,

18 EDMUND G. BROWN JR.
19 Attorney General of the State of California

20 DAVID S. CHANEY
21 Chief Assistant Attorney General

22 FRANCES T. GRUNDER
23 Senior Assistant Attorney General

24 MONICA N. ANDERSON
25 Supervising Deputy Attorney General

26 */s/ James M. Sobolewski*

27
28 JAMES M. SOBOLEWSKI
29 Deputy Attorney General
30 Attorneys for Defendants